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TOM LYTHGOE, CHAIR

KEN WEBER

DAVE KIRSCH

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
December 8, 2009**

Present: Commissioners Lythgoe, Weber and Kirsch; Dennis Owens, Deputy County Attorney; Harold Stepper and Mike Hoffman, County Planners; Joe Carter, Road Supervisor; Jan Anderson, *Boulder Monitor/Jefferson County Courier*; Ted Schuele, Paul Foran, Ken Foran, Greg Robbins, Bob Mullenix, Marty Zaluski, Gary Petersen, Miles Partin, Doug Abelin, Ted Schurk, Harley Harris, Shane Schmaus, Paul and Tammy LaVigne, Dean Ellis, Marti Neff, David Gallik, Mark Krpan, Mike Herbst

MINUTES

Commissioner Weber moved to adopt the minutes of November 17. Commissioner Kirsch seconded. The motion carried.

CORRESPONDENCE

Commissioner Weber read a letter from the Department of Revenue regarding changed or new taxing jurisdictions, and the need to get that information to the Department of Revenue as soon as possible. This will be forwarded to Bonnie and Patty.

Commissioner Weber read a letter from the Montana Natural Resource Information System. They are requesting to name an unnamed stream in Jefferson County Shedhorn Creek. This will be forwarded to Melissa to make sure that there is no name attached to the stream in question.

CALENDAR REVIEW

12/09 Conference call on impact fees - 1:00
12/10 CTAC - Whitehall - 8:00
Tri-Co Fire - Helena - 9:00
Elkhorn Working Group - 3:00
Weed Board - 6:00
Library Board - Whitehall - 6:30
12/14 Center for Mental Health - Helena - 11:00

COMMISSION REPORTS

MEETING WITH EXXON

Commissioner Lythgoe reported that he had a meeting with a representative of Exxon on Friday. They will be moving some pretty heavy-duty equipment to Canada next summer. Some of the tractor-trailers are 175 feet long. They are meeting with officials from all of the counties that they will be driving through. This is a billion dollar project, with the equipment built in Korea, shipped to California then trucked to Canada.

YOUTH MENTORING PROGRAM/COMMUNITY SERVICE

Commissioner Lythgoe reported that he had a meeting with Greg Jackson, who is MACo's work comp contact. We are going to have some juveniles that will be doing community service in Jefferson County and we needed to have a conversation with all of the parties involved to ensure that would be covered by worker's comp. Also, there will be mentors assigned to the kids who will also be covered by worker's comp.

SOUTH CAMPUS

Commissioner Lythgoe reported that he had a meeting this morning with the group that is looking to develop some of the buildings on the south campus. They are looking at developing those buildings on behalf of HCT-U of M-Helena for a culinary arts school. They are looking at restoring the multi-level buildings. The developer has been in contact with the Vo-Tech, who is very interested in the project. Everything is very encouraging at this time, and the big decision will be made by the board of regents sometime in October, but they are proceeding like this is going to happen.

MEDIATION

Commissioner Weber reported that on the 1st he and Commissioner Lythgoe attended the mediation over lawsuit regarding Liverpool Mine Road. He isn't sure if anything has been resolved, but area landowners were getting together and negotiating some things. They may have come up with something that will release the Commission from that lawsuit.

SOLID WASTE SAFETY MEETING

Commissioner Weber reported that on the 2nd he met with the Solid Waste crew for their safety meeting. There have been no accidents. They discussed the cold weather and will be updating first aid kits.

MEETING WITH INTERESTED PARTY

Commissioner Weber reported that he met with Terry Reed in Whitehall. Terry is interested in county government, the Commission office and how it ties in with the different courts. He is considering running for office, and was doing some research.

MACo TRAINING

Commissioner Kirsch reported that he spent four days at MACo in Helena for Commissioner training.

SUBDIVISION REVIEW

VARIANCE REQUEST – TIMBERLINE RIDGE MINOR SUBDIVISION

Mike Hoffman, County Planner, presented his report to the Commission. The developer is requesting a variance to allow the curve radius for the portion of the road lying within the proposal to fall below the County standard of 249 feet to a minimum of 125 feet. This is shown on the engineered stamped drawing submitted by Kadrmas, Lee and Jackson. They are also requesting a variance to allow the newly constructed road approach that intersects Woodland Park Loop to deviate from the county approach standards. Mountainous topographical conditions prohibit the construction of an approach meeting County specifications, which if constructed, would result in a substantial increase in erosion and road damage to existing county road infrastructure. Existing county surfaces would be required to be raised with at least 2.5 feet of fill material to off-set negative up slope drainage issues associated with a re-constructed approach built to county standards. Also, a standard approach would create negative impacts to land parcels below the existing county road surfaces as a result of steeper down-slope gradient and create higher volumes of run-off erosion onto adjacent parcels.

Commissioner Weber asked about the culvert mentioned in Finding of Fact 12. He asked if the culverts are shown on the drawing. Mike stated that they are. Commissioner Weber asked if they want to pull the proposed culvert that crosses their road, not the existing culvert on the other road. Mike stated that this is correct

Joe Carter, Road Supervisor, said that he has worked with the developer and the engineer on this project. The culvert really isn't needed. They have sloped the road so that everything would drain off and catch the culvert going across Woodland Loop Road so they don't need the culvert at the top of a hill. The contractor also raised the road on Woodland Park Loop to compensate for some of the degrees to come off of that for an approach. He put considerable time and material on the county road to make everything fit in together.

Commissioner Weber asked if this makes a natural holding area, where the two roads meet. Joe said that it does not; there is a culvert across Woodland Park Loop that will take the water on the right-hand side and on the other side it follows down and goes around the curve. He recommended that the Commission approve the variance.

Commissioner Weber moved to grant the variance request for the Timberline Ridge Estates minor subdivision. Commissioner Kirsch seconded. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

DISCUSS AND DECIDE ON RECOMMENDATION OF SOLID WASTE BOARD REGARDING SOLID WASTE MANAGER

Commissioner Lythgoe read a letter from Ben Sautter, Solid Waste Board Chair, recommending that Ken Weber be approved as the Solid Waste District Manager.

Commissioner Lythgoe moved to accept the recommendation of Chair Ben Sautter. Commissioner Kirsch seconded and noted that he will have to resign as a Commissioner before he can accept the Solid Waste position. The motion carried, with Commissioner Weber abstaining.

RESOLUTION 44-2009 RELATING TO THE \$249,999.00 BOND FOR THE MOONLIGHT RIDGE RSID

Commissioner Weber read the resolution as follows:

RESOLUTION 44-2009

RESOLUTION RELATING TO \$249,999.00 BOND FOR THE JEFFERSON COUNTY (MOONLIGHT RIDGE) RURAL IMPROVEMENT DISTRICT NO. 2511; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR

BE IT RESOLVED by the County Commission (the "Commission") of Jefferson County as follows:

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01. Creation of the District. By adopting the Resolution of Intention, this Commission declared its intention to create the following Rural Improvement District No. 2511:

Moonlight Ridge Rural Improvement District No. 2511 (the "District"), for the purpose of making local improvements (the "Improvements") for the special benefit of the District, in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Part 21 (the "Act"). This Commission by adopting the Resolution, did create the District and order the proposed Improvements in accordance with the Resolution of Intention.

1.02. Costs. The costs and expenses connected with and incidental to the formation of the District to the County, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction contract and all other costs and expenses (hereafter, the "Projects") will be levied and assessed upon the assessable real property within the District on the basis described in the Resolution of Intention. This Commission has jurisdiction and is required by law to levy and assess such amounts, to collect such special assessments and credit the same to the rural improvement district fund created for the District, which fund is to be maintained on the official books and records of the County separate from all other funds, for the payment of principal and interest when due on the Bond herein authorized.

1.03. Board of Investments; INTERCAP Revolving Program. Pursuant to Montana Code Annotated, Section 2-15-1808 and Title 17, Chapter 5, Part 16 as amended, and in accordance with the Indenture of Trust, dated as of March 1, 1991 as amended and supplemented (the "Indenture"), between the Board of Investments of the State of Montana (the "Board of Investments") and U.S. Bank Trust National Association MT (formerly known as First Trust Company of Montana National Association), as Trustee (with any successor trustee thereunder), (the "Trustee"), the Board of Investments has established its INTERCAP Revolving Program (the "INTERCAP Program") pursuant to which the Board of Investments will issue and remarket, from time to time, its Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program)(the "Board Bonds"), for the purpose of making loans to local government units to finance or refinance the acquisition and installation of equipment, personal and real property improvements, to provide temporary financing of projects or for other authorized corporate purposes of a local government unit. All Board Bonds issued under the Indenture are secured equally and ratably thereunder and bear interest at a rate that is adjustable annually, effective for the

period commencing on each March 1st and ending on the last day of the next succeeding February.

1.04. Sale and Issuance of Bond. For the purpose of financing the costs and expenses of making the Improvements, which are to be assessed against the property within the District as provided in the Resolution of Intention, this Commission hereby authorizes the negotiated sale of a rural improvement district bond in the principal amount of \$249,999.00 (the "Bond") to the Board of Investments, in accordance with the provisions of Montana Code Annotated, Section 7-12-2172(2), upon the further terms set forth in this Resolution. The Board will fund its purchase of the Bond from the proceeds of a series of Board Bonds or from loan payments made with respect to loans funded from such proceeds.

The Bond may bear a variable rate of interest and be sold at a private negotiated sale since the principal amount of the Bond does not exceed \$500,000.00

1.05. Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana, including Montana Code Annotated, Title 7, Chapter 12, Part 21, in order to make the Bond a valid and binding special obligation in accordance with its terms and in accordance with the terms of this Resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Section 2. The Bond.

2.01. Principal Installments, Maturities, Denominations, Date Interest Rates. For the purpose of paying the costs and expenses incurred in construction of the Improvements, and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the sale described in Section 1.04, the County shall forthwith issue and deliver to the Board of Investments the Bond payable solely from the Rural Improvement District Fund (the "District Fund") and denominated "Jefferson County Rural Improvement District, Bond No. 2009-2.

<u>District Name</u>	<u>District Number</u>	<u>Bond Number</u>
Moonlight Ridge	2511	2009-2

The Bond shall be in the principal amount of \$249,999.00, shall be issued as a fully registered bond numbered 2009-2, shall be dated, as originally issued, and registered as of the date of delivery to the Board of Investments, and principal installments thereof shall mature on February 15, 2025, in the years and principal amounts set forth on Schedule A attached, and shall bear interest from the date of delivery of the Bond at the rate per annum equal to the Loan Rate (as hereinafter defined), as determined from time to time, for the periods hereinafter described.

Interest on the Bond shall be payable on each February 15th and August 15th, commencing August 15, 2010 to the owners of record thereof as such appear on the bond register on the date of payment, whether or not such day is a business day. The Bond shall represent all the principal installments of the issue.

For purposes of this Resolution, "Loan Rate" shall mean, for the period from the date of original registration of the Bond until February 15, 2010, the rate of three and twenty-five hundredths percent (3.25%) per annum, and, for each twelve-month or shorter period thereafter during the term of the Bond commencing on February 16th and concluding on February 15th in the next succeeding year, an annual interest rate specified by the Trustee and calculated as provided under the Indenture, which rate generally shall be equal to the sum of (i) the interest rate on the Board Bonds during such period (which interest rate may not exceed fifteen percent (15%) per annum) plus (ii) a rate, not to exceed one and one-half percent (1.50%) per annum, sufficient to produce the amount necessary to pay the County's share of Program Expenses (as hereinafter defined). For the purposes of this Section 2.01, "Program Expenses" shall mean the expenses of the Program, including (without limitation) the fees and expenses of the Trustee and such other fees and expenses of the Program or of the Board of Investments relating thereto as shall be approved by the Board of Investments. Under the Indenture, the Trustee is to calculate and notify the County, within 20 days after each March 1st, of the interest rate on the Bond for the period commencing on the preceding February 16th.

2.02. Negotiability, Transfer and Registration. The Bond shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the Board of Investments. While so registered, principal of and interest on the Bond shall be payable to the U.S. Bank Trust National Association of MT (formally known as First Trust Company of Montana National Association), Corporate Trust Services, 50 Livingston Avenue, St. Paul, MN 55107 or such other place as may be designated by the Board of Investments in writing and delivered to the County. The Bond shall be negotiable, subject to the provisions for registration and transfer contained in this section. No transfer of the Bond shall be valid unless and until (1) the holder, or duly authorized attorney or legal representative, has executed the form of assignment appearing on the Bond, and (2) the County Treasurer of the County or any successor financial institution or trust company which this Commission may appoint to so act as Bond Registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. All costs of such registration and transfer shall be paid by the County, except that the County may charge the holder for any tax, fee or other governmental charge imposed upon or with respect to the transfer of the Bond. The County shall be entitled to deem and treat the person in whose name the Bond is registered as the absolute owner of the Bond for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the County's liability upon such Bond to the extent of the sum or sums so paid.

2.03. Execution and Delivery. The Bond shall be executed on behalf of the County by the manual signatures of the Commission Chair and the County Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Bond. The Bond shall be sealed with the corporate seal of the County. In the event that any of the officers who shall have signed the Bond shall cease to be officers of the County before the Bond is issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Bond may be signed by an authorized official who did not hold such office on the date of adoption of this Resolution. The Bond shall be delivered to the Board of Investments, or its attorney or legal representative. The Bond shall be registered in the office of the County Clerk and the County Treasurer.

2.04. Prepayment, when Mandatory Redemption Required. The principal installments of the Bond are subject to mandatory redemption in order of registration on any interest payment date if, after paying all principal and interest then currently due on the Bond, there are monies available in or to the credit of the Rural Improvement District Fund of the County, either from the prepayment of assessments levied in the District or from surplus proceeds of the Bond not required to pay costs of the Improvements, for the redemption thereof, and in the manner provided for the redemption of the same. The principal installments of the Bond are subject to redemption at the option of the County from other sources of funds available therefor on any interest payment date. The redemption price is equal to the amount of the principal installment or installments of the Bond to be redeemed plus interest accrued thereon to the date of redemption, without premium. The date of redemption shall be fixed by the County Treasurer, who shall give notice by first class mail, postage prepaid, to the owner or owners of the Bond at their address shown on the bond register, of the numbers of the principal installments to be redeemed and the date on which payment will be made, which date shall not be less than ten days after the date of mailing notice, on which date so fixed interest shall cease. On the date so fixed interest on the principal installments of the Bond so redeemed shall cease to accrue.

2.05. Form. The Bond shall be drawn in substantially the form set forth in Exhibit A hereto, and by this reference made a part hereof, with such modifications as are permitted by the Act.

Section 3. District Fund; Assessments.

3.01. District Fund. There is hereby created and established the District Fund designated as the "Rural Improvement District Fund", which shall be maintained by the County Treasurer on the books and records of the County separate and apart from all other funds of the County. Within the District Fund there shall be maintained two separate accounts, designated as the "Principal Account" and "Interest Account," respectively.

3.02. Principal Account and Interest Account. Money in the Principal Account and the Interest Account

shall be used only for payment of the principal of and interest on the Bond as such payments become due or to redeem prior installments of the Bond.

Upon collection of the installment of principal and interest due on November 30 and May 31 of each fiscal year on the special assessments to be levied with respect to the Improvements, the County Treasurer shall credit to the Interest Account so much of said special assessments as is collected as interest and the balance thereof to the Principal Account. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the Principal succeeding interest payment date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the District Fund. All money in the Interest Account and the Principal Account shall be used first to pay interest due, and any remaining money shall be used to pay the Bond then due and, if money is available, to redeem the Bond or principal installments thereof in accordance with Section 2.04. Redemption of Bond shall be in order of the principal installments, and interest shall be paid as accrued thereon to the date of redemption, in accordance with the provisions of Montana Code Annotated, Section 7-12-2174.

3.03. Loans from Revolving Fund. The Commission shall annually or more often if necessary issue an order authorizing a loan or advance from the Rural Improvement District Revolving Fund of the County (the "Revolving Fund") to the District Fund in an amount sufficient to make good any deficiency then existing in any Interest Account and shall issue an order authorizing a loan or advance from the Revolving Fund to the District Fund in an amount sufficient to make good any deficiency then existing in the Principal Account in such order and in each case to the extent that money is available in the Revolving Fund. A deficiency shall be deemed to exist in the Principal Account or the Interest Account if the money on deposit therein on any February 1 or August 1 (excluding amounts in the Principal Account representing prepaid special assessments) is less than the amount necessary to pay principal of the Bond due, and interest on the Bond payable, on the next succeeding interest payment date.

Pursuant to Resolution No. 11-2007, the County has undertaken and agreed to provide funds for the Revolving Fund by levying such tax or making such loan from the General Fund as authorized by Montana Code Annotated, Section 7-12-2182. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on Rural Improvement District bonds or warrants of the County is not sufficient to make good all deficiencies then existing in the Rural Improvement District Fund for which the County has covenanted to make loan from the Revolving Fund, then, pursuant to 7-12-2183 MCA, the balance on hand in the Revolving Fund shall be allocated to the funds of the Rural Improvement District in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such rural improvement district bonds or warrants of the County has been paid. On any date when all accrued interest on rural improvement district bonds and warrants of the County payable from funds for which the County has covenanted to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be lent or advanced to the Rural Improvement District Fund for payment and redemption of bonds to the extent the district funds are deficient for such purpose, and, if money in the Revolving Fund is insufficient therefor, pro rata, in an amount proportionate to the amount of such deficiency.

Section 4. Covenants and Representations. The County covenants and agrees with the owners from time to time of the Bond that until the Bond and interest thereon are fully paid:

4.01. Compliance with the Resolution. The County will hold the District Fund and the Revolving Fund as trust funds, separate and apart from all of its other funds, and the County, its officers and agents, will comply with all covenants and agreements contained in this Resolution. The provisions hereinabove made with respect to the District Fund and the Revolving Fund are in accordance with the undertaking and agreement of the County made in connection with the sale of the Bond as set forth in Section 1.04.

4.02. Construction of Improvements. The County has taken all steps necessary to enforce the provisions of the construction contracts and bond relating to the Improvements and to ensure the completion of the Improvements for the benefit of the District in accordance with the plans and specifications and within the time therein provided, and has paid all costs thereof promptly as incurred and allowed, out of the District Fund. All awards of contracts

have complied with the applicable bond and award statutes.

4.03. Levy of Assessments. The County will do all acts and things necessary for the final and valid levy of special assessments upon all assessable real property within the boundaries of the District in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States in an aggregate principal amount not less than the original principal amount of the Bond. Such special assessments shall be levied on the basis or bases prescribed in the Resolution and shall be payable in semiannual installments during the term of the Bond. Each special assessment shall bear interest on the whole amount remaining unpaid at an annual rate equal to the sum, determined as of the date an installment of the special assessment is levied each fiscal year, of: (i) the then current Loan Rate, plus (ii) one percent (1.00%) per annum, plus (iii) if and to the extent that the Loan Rate is then less than 15% per annum (the maximum interest rate on the Bond), an additional one percent (1.00%) per annum, interest being payable with principal installments. The assessments to be levied will be payable on the 30th day of November and on the 31st day of May in each fiscal year during the term of the Bond and, if not theretofore paid, shall become delinquent on such date unless paid in full. The first partial payment of each assessment shall include interest on the entire assessment from the date of original registration of the Bond to the first interest payment date thereon, and each subsequent partial payment shall include interest for six months on that payment and the then remaining balance of the special assessment. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Montana Code Annotated, Section 7-12-2168. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of the assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-214.

4.04. Reassessment. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the County and this Commission, its officers and employees, will take all steps necessary to correct the same and to reassess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will reassess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Montana Code Annotated, Section 7-12-2165. Any special assessment, or reassessment or re-levy shall, so far as is practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

If proceeds of the Bond, including investment income thereon, are applied to the redemption of principal installments thereof, as provided in Montana Code Annotated, Sections 7-12-2173 and 7-12-2174, or if refunding bonds are issued and the principal amount of the outstanding bond of the District is decreased or increased, the County will reduce or increase, respectively, the assessments levied in the District and then outstanding pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of bond represented by the refunding bonds in accordance with the provisions of Montana Code Annotated, Sections 7-12-2165.

4.05. Absence of Litigation. There is now no litigation pending or, to the best knowledge of the County, threatened questioning the validity or regularity of the creation of the District, or the undertaking and agreement of the County to levy special assessments therefor and to make good any deficiency in the collection thereof through the levy of taxes for and the making of advances from the Revolving Fund, or the right and power of the County to issue the Bond in any manner questioning the existence of any condition precedent to the exercise of the County's powers in these matters. If any such litigation should be initiated or threatened, the County will forthwith notify in writing the Board of Investments, and will furnish the Board of Investments a copy of all documents, including pleadings, in connection with such litigation.

4.06. Waiver of Penalty and Interest. The County covenants not to waive the payment of penalty or interest on delinquent assessments levied on property in the District for costs of the Improvements.

4.07. Additional Pledge of Revolving Fund. The County agrees that so long as any principal or interest on

the Bond is outstanding and unpaid, that it will not pledge to make a loan from the County Revolving Fund as authorized in 7-12-2183 MCA for the benefit of any additional County improvement district or any additional project within a currently established rural improvement district without the Board of Investments' written consent.

Section 5. Mandatory Contribution to Revolving Fund As provided in 7-12-2182, MCA, the County must provide an amount equal to 5% of the principal amount of any bonds or warrants to be issued if the bonds or warrants are secured by the Revolving Fund. The County will deposit an amount equal to 5% of the principal amount of the Bond advanced into the Revolving Fund.

Section 6. Conclusive Findings as Required by Statute By adopting this Resolution, the County authorizes the issuance of the Bond and its sale to the Board of Investments. The County Revolving Fund is pledged as part of the security of the Bond. As required by 7-12-2185 MCA, the County makes the express finding that the creation of the District, the authorization of bonded indebtedness, and the pledge of the Revolving Fund are in the public interest after the Commission has considered the following and other material factors as required by law:

- a) the estimated market value of the lots, parcels, or tracts included in the District at the time that the District is created in comparison to the estimated market value of the value of lots, parcels, or tracts after the improvements are made;
- b) the diversity of ownership of property in the District;
- c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the District in comparison to the estimated market value of the lot, parcel or tract after the improvements are made;
- d) the amount of any outstanding special assessments against the property in the District;
- e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the District; and
- f) the public benefit of the improvements proposed to be financed.

Section 7. Authentication of Transcript. The officers of the County are hereby authorized and directed to furnish to the Board of Investments certified copies of all proceedings relating to the issuance of the Bond and such other certificates and affidavits as may be required to show the right, power and authority of the County to issue the Bond, and all statements contained in and shown by such instruments, including and heretofore furnished, shall constitute representations of the County as to the truth of the statements purported to be shown thereby.

Section 8. Discharge. When the liability of the County on the Bond has been discharged as provided in Section 2, all pledges, covenants and other rights granted by this Resolution to the owners of the Bond shall cease.

PASSED by the Commission of the County of Jefferson, this 8th day of December, 2009.

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

KEN WEBER, COMMISSIONER

DAVE KIRSCH, COMMISSIONER

Commissioner Lythgoe stated that he wanted to make it clear that those paying for this are those that live in that subdivision. He went on to say that the project has been completed and the contractor did a very nice job.

Commissioner Weber moved to adopt the resolution. Commissioner Lythgoe seconded. The motion carried.

PUBLIC HEARING – PETITION TO CLOSE A PORTION OF A STREET IN CLANCY

Commissioner Lythgoe called the public hearing to order and called for a report from Joe Carter, Road Supervisor.

Joe stated that he viewed the area. This portion of street was a drive to the old County shop that is no longer there. There is no way for this to become a through street, and essentially goes nowhere. Joe recommended that the Commission grant the petition.

Commissioner Lythgoe called for comments and hearing none, closed the public hearing.

RESOLUTION 43-2009 ORDER ABANDONING A COUNTY STREET IN CLANCY

Commissioner Weber read the resolution as follows:

RESOLUTION 43-2009

AN ORDER ABANDONING A COUNTY STREET IN CLANCY

A petition was filed with the Board of County Commissioners of Jefferson County, Montana (hereinafter, the “Board”), by Alan R. Smith, Michelle S. Coster, Louis Dumas, Renee Dumas, Randall Lamping and Andrea Lamping on the 16th day of November, 2009. This petition requested the abandonment of a certain Jefferson County street in an unincorporated town or townsite within Jefferson County, Montana, and being a portion of a street within the original townsite of Clancy, Jefferson County, Montana. The description of the subject County street is set forth as follows:

Quartz Street south of Clancy Street as shown on the original plat of Haynes Second Addition to Clancy.

Pursuant to Title 7, Chapter 14, Part 26, MCA, the Board made a preliminary review of the subject Petition. The Board found that the petition was submitted by all of the landowners affected by street petitioned to be closed within Jefferson County and found that said petition described the particular street or portions thereof to be abandoned, the general route thereof, and

the lands and owners affected by the proposed abandonment.

The Board further determined that the consent of the owners of the affected lands was endorsed upon the Petition by their execution of the same and that the Petition set forth the necessity for and advantage of the petitioned action.

Therefore, the Board ordered that the feasibility, desirability, and cost of granting the prayer of the Petition, and the merits or demerits of the proposed abandonment be investigated. On December 8, 2009, Joe Carter reported that he investigated the merits of the petition and recommended that the petition be granted.

The Board considered the Petition and the findings of Joe Carter's investigation. The Commission approved the closure of said street; hereinafter described:

Quartz Street south of Clancy Street as shown on the original plat of Haynes
Second Addition to Clancy.

The Board found that the granting of the relief sought in the Petition was in the best interest of the County, was both feasible and desirable for the use and benefit of the public, would not cause any increase in costs to the public, and could be done without detriment to the public interest.

Upon such basis, the Board determined that the Petition should be granted and that an appropriate Order should be entered.

Therefore, **IT IS HEREBY ORDERED** as follows:

1. That the Petition of Alan R. Smith, Michelle S. Coster, Louis Dumas, Renee Dumas, Randall Lamping and Andrea Lamping is hereby granted subject to the following conditions:
 - a) that the Petitioner recognize that no owner shall ever claim or attempt to claim that any portion of said street constitutes a "lot" or "parcel", distinct from the owners adjoining lot or property, upon which the separate residence or structure requiring water and sewer facilities can be constructed, and;
 - b) that any utility easements now existing on the right-of-way will be continued unaltered and that access by utility company employees for the maintenance of the equipment shall be allowed, and;
 - c) that Jefferson County shall retain full utility rights, if any.
2. That the portion of the said Jefferson County street which is abandoned by this

Order is more particularly described as:

Quartz Street south of Clancy Street as shown on the original plat of Haynes
Second Addition to Clancy.

BE IT FURTHER RESOLVED that upon abandonment the east half of said property will become part of Lot 1 Block 13 of Haynes Second Addition to Clancy and the west half will become part of Lot 13 Block 14 of Haynes Second Addition of Clancy. An access easement of 6 feet on each side of existing center line will be given to Lot 1 of Clancy Hills Subdivision currently owned by Randall and Andrea Lamping.

DATED this 8th day of December, 2009.

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

TOMAS E. LYTHGOE, CHAIR

KEN WEBER, COMMISSIONER

DAVE KIRSCH, COMMISSIONER

Commissioner Weber moved to adopt. Commissioner Kirsch seconded. The motion carried.

**SIGN MOU WITH TOWN OF WHITEHALL REGARDING PLANNING ISSUES AND
JURISDICTIONAL AREAS**

Commissioner Weber read the document, which is on file in the Clerk and Recorder's office.

Commissioner Weber stated that our planning staff and County Attorney were instrumental in putting this document together. This is not a document that binds our planning boards together, but it does state that our planning staff and their planning staff will work together on issues as they come up that relate to the county and town. It helps us to state that we will work together and puts on paper what is currently happening.

Harold Stepper, County Planner, stated that the only thing that he has to say is that he hopes this isn't a prelude to the formation of a joint city-county planning board, which never seem to work as they are intended to.

Commissioner Weber moved to sign the MOU regarding planning issues and jurisdictional areas with the Town of Whitehall. Commissioner Lythgoe seconded. The motion carried.

UPPER JACKSON CREEK ROAD: PLAINTIFF'S SETTLEMENT PROPOSAL – DISCUSS AND DECIDE

Dennis Owens, Deputy County Attorney, stated that we have to report back to the court on December 18th regarding this matter. He has previously submitted a proposal to the Commission for review. He stated, not being personally involved at the beginning of the dispute, he is personally disgusted that the BLM was not involved in this to a more meaningful extent early on. He has the feeling that, in trying to go through all of this, that the rights of private property owners to the quiet use and enjoyment of their property, when balanced against the public's interest hasn't been addressed at all by BLM, and Jefferson County has been left holding the bag. At this point in time it is a hand-off to the Commission. He will now defer to Mr. Harris, as it is his proposal.

Harley Harris, attorney for the plaintiffs, stated that he appreciates the opportunity to address the whole Commission. His clients are homeowners on Upper Jackson Creek Road. BLM opened access in 2003 and at that point in time traffic exponentially increased. This is not a road that is suitable for any appreciable use of traffic. His clients have been before the Commission numerous times in the past. After two or three years of trying to engage in discussions with the Commission and the County Attorney's office, asking reasonable questions, specifically to be shown where this road was made a public road and not having received an answer from the county but being told that it was the plaintiff's job to prove that it isn't, they retained legal counsel. They filed suit and asked the county to provide evidence that the road was established through proper channels and no response was forthcoming. After some time of getting no response, they decided to file suit, which has worked its way through the process.

After the discovery process, the county was required to answer, and it is clear that the county does not have any evidence that this particular piece of Jackson Creek Road was ever established as a public road through a valid process; the only argument that the county has left in this argument is that this is a county road through prescriptive use. They have gone through the discovery process on that issue as well and prescriptive use claims are factually specific. The bulk of evidence is that use of road was primarily by local landowners for their own personal purposes. Also, one of the key witnesses that the County has identified, Ted Schuele, has indicated in a deposition that as far as he was concerned, his use of the road was by permission, which is directly at odds with a claim for prescriptive use. The kinds of usage identified by the County and its witnesses are predominately recreational use, which is not enough for prescriptive use. They are getting to the deadline and they were going to ask Judge Tucker that this portion of Jackson Creek be deemed private as they feel that there is not sufficient evidence that the County has been able to provide that there is any county or public interest in this road.

Harley stated that he has been working with Dennis on this, and it got down to trying to figure out what exactly was at issue; the fact of the matter is that this a road that goes to nowhere. It goes to BLM property and to Dr. Massouh's and Mr. Schuele's properties. Nothing in the lawsuit will affect Mr. Schuele's access to his property, or his successors. The access that the BLM put in is what the primary issue is; it is the wrong thing in the wrong place. This is probably a situation of a few bad apples, but his clients have had to put up with numerous indignities and safety issues.

Harley noted that the same network of BLM recreational trails has historically been accessed from Lump Gulch, so what this point of access does is save a few landowners 10 minutes to get to the same set of roads. There is no other reason for this road.

Regarding the consent decree, all that is being requested of this Commission is to allow them to present this to the court. They will tell Judge Tucker that they have a solid case. This settlement allows more access than what they are asking through litigation. They just need the Commission to say that this seems like a reasonable deal and allow Dennis or Matt to go forward with them to Judge Tucker. They will be going to the Judge either way. If Judge Tucker decides that this is a public prescriptive road, then there will be an entirely different set of problems. A prescriptive road is limited to historic use. The County at that time will be left with a can of worms on how to enforce and police use of the road. He wants to make it very clear where they are in the process and what the options are.

His clients wanted him to add a couple things. They didn't feel that their interests were heard by the Commission, they had to hire legal counsel, and spent money out of pocket. There is also frustration that a single individual seems to have been able to dictate the County's direction.

Matt Johnson, County Attorney, stated that he and Dennis have talked about this and this is something that we have been litigating for quite some time. A recent case just came out and he knows that Dennis was quite concerned with the attorney fees that were awarded in that case, \$45,000. This is a legitimate concern. If there is a way to work out a resolution we are going to try to do that versus litigating with every single person in this county over every single road. He told Dennis to try to work out the best solution that he could to bring before the Commission. He has worked hard and has come up with what he thought was potentially a good solution in this case. Obviously, there are some people that are upset about this, and this is why this is a public process. The Commissioners can't make a decision without the public's comment and obviously this is the public's opportunity to comment on what they think of the road. Of course there will be challenges; if this was a clear-cut case they wouldn't be in litigation. Dennis has worked hard on this and feels pretty frustrated with the backlash that he has gotten over it. Even if the Commission doesn't agree with what has been presented today, he would hope that it would spark discussion.

Dennis stated that he is frustrated, because he tried to do work-arounds on this and the BLM wasn't interested. He has contacted them and he believes that Mr. Harris' office has too to try to make an accommodation that would satisfy public's interest and the private property owners. He doesn't think that he has ever made it a secret that he has a bias towards private property ownership as the touchstone of individual liberties. Then, when you look at litigation risk and cost, then you look at mitigating or minimizing it. How does the public or the people on Upper Jackson Creek get access to the trail system that they have paid for; and we have a totally non-responsive BLM that wasn't even interested even with their creation of a new access officer in Billings who he has contacted. This is where his frustration comes from.

Commissioner Lythgoe stated that when he first read this, it gave the residents of Upper Jackson Creek exactly what they want. The Commission has received numerous comments from people who are totally opposed to this, and he doesn't know if there are any negotiations as it related to

this settlement agreement. He is not sure if this is considered to be a compromise by these folks, but he doesn't see a compromise. The only ones who can travel that road (motorized) are people who live on that road and Mr. Schuele, so he is not quite sure what the give was on their side of the aisle. Harley said that it does allow access to the public; he understands that there is a school of thought out there that non-motorized access is not access, but this is not true. Less than ½ mile would be closed off. He can't say that they aren't willing to discuss further, but they feel that what is before the Commission is a reasonable compromise. People have had plenty of time to get involved and make their opinion known.

Commissioner Lythgoe stated that a lot of letters and phone calls are not just saying "I don't think this road should be closed", there are many that say "I don't think that this road should be closed because I've been using the road for the last x-number of years." He can't verify these, but those are the kind of letters that they are receiving.

Commissioner Lythgoe stated that this is an official public hearing, but the Commission is willing to listen to comments. He would prefer to take turns between pro and con.

Paul Lavigne stated that he understands that this is a difficult situation. He hunts, fishes and understands public access, but he doesn't feel that this trumps private property rights and he doesn't feel that the County has come up with anything that shows this is a county road. Recreational prescriptive use doesn't exist. If they want to look at what has been compromised, this doesn't ask for attorney fees and Mr. Schuele retains access. He understands that it is fun to go through his property to access the trail system, but there are just too many doing this now. Currently, 4-wheelers are using his driveway as a turn-around.

Marty Zaluski stated that he would like to echo Commissioner Lythgoe's concerns regarding the settlement agreement; he doesn't see a compromise. It is basically do what we want or else. He proposed some compromises and there are a lot of opportunities for this. He wanted to comment on Mr. Harris' comments; it seems that he wants to back the Commission into a corner and make it seem that there is not an alternative. To close, he would like to challenge Mr. Harris' credibility when he describes the road as a twisty road with drop-offs; he would like Mr. Harris to present evidence that the road is dangerous and has drop-offs. He uses the road responsibly, and wants his children to use the road responsibly.

Shane Schmaus noted that some of the issues in questions are in his front yard. There is an 8-foot bank in front of his house. The road is also narrow there, about 11 feet wide. Regarding there being no give and take, they are saying that this isn't a county road, so for them to even allow foot traffic, that is them bending. Just because Mr. Schuele has been trespassing for years doesn't make it legal. For those who say that they don't own the road, they should look at the tax bills and see that they are paying taxes on the road.

Doug Abelin said that he has been a user of this road since 1971. He is also probably a culprit as an employee of the BLM that built the staging area that is the take-off point for access to the recreational area. As a recreationalist, he feels that this is a 2477 public route and road. Under Montana law, a route is a road. He is not a lawyer, but he has lobbied for 22 years for motorized recreation. They have every right to use the road; if there is a dispute of use, it is an enforcement

issue and the people breaking the law should be prosecuted. Access shouldn't be the issue.

Dean Ellis stated that for the record, trespassing across private property does not give you permission and does not create an easement across private property. 4-wheelers and motorcycles that go through there are basically trespassing on their private property. Commissioner Lythgoe asked if people are leaving the road and coming onto private property. Dean stated that the road is their private property.

Gary Peterson said that he is a member of the Capital Trails Vehicle Association, a Helena club that promotes safe, responsible use of motorized vehicles. They realize that there are some people that will abuse the situation no matter what you do. It is like someone driving down the interstate and throwing litter on the highway. If they are caught by a highway patrolman they are written a ticket for the infraction, they don't close the highway. The area needs to be policed and tickets given out. Not sure on how many people that live up there are a part of the suit. He feels that this is akin to someone who buys a piece of property near the airport and are then bothered by the noise and want to close the airport. Gary noted that motorized recreation has lost about 95% of their riding area in the forest, BLM, so this is something that they cherish. If people are on private property tearing things up, then this needs to be stopped. He feels that the area needs to be policed more.

Tammy Lavigne said that there are two things that she wants to reiterate – traffic has increased, and it has been in their property as theirs is one of the places where people turn around or come into their driveway and ask for directions; this is a safety issue to her. Traffic has increased; they start to hear motorized traffic at 8 in the morning and leaving at night making enough noise to wake her. They have also seen an increase in litter and during hunting season, carcasses. Most people are good, but there are some bad apples. Tammy stated that this comes down to the issue of a set way to establish a county road. Through all of their research and the research by their attorney this did not happen, and she feels that it is best to reach settlement before it goes any further.

Terry Walman said that he has heard a lot of arguments and he can sympathize with them if in fact people are trespassing on private property. One of the reasons that he bought his property was the proximity to public lands and the access from Upper Jackson Creek Road. He feels that his interests would be impeded if that road were to be closed. Regardless of how the Commission decides, there is one aspect of the consent decree that is totally unacceptable; agreement calls for use of Jack Mountain roads for turn-around. He stated that these are private roads; they were created by the developer and are maintained by the homeowner's association and no one has an easement for them. Commissioner Weber noted that at the time of final plat, subdivision roads become public roads. He isn't saying that this is where they are headed or that this is what is going on, but if he looks at the subdivision, even though paid for by the subdivider, this is probably a public road.

Mark Krpan said that pretty much everything has been said, but he wanted to remind Commissioner Lythgoe what he said about five years ago, that the county doesn't have to prove that this is a county road, the plaintiffs have to prove that it isn't. He asked how much more proof is needed.

Bob Mulinex stated that he has a couple points to make. One is the cumulative effect of closures to motorized traffic; the first was the Elkhorn Mountains, then, closing off the track behind the Montana City dump closing off BLM access there. If they close Upper Jackson Creek the only access that will be left is Sheep Mountain, but there is development up there, and that will probably be closed off too. He sees them losing step by step and soon there will be no place left to recreate in the county. Bob offered an easy compromise of having the road open only during the day. He moved to Montana City in 1993 and has been using the road since then. The first he has heard of any road closure was about it two weeks ago. Not sure why the public wasn't aware of this sooner.

Shane Schmaus stated that he would like to clear up that their settlement agreement doesn't restrict access to BLM; the historical access is from Lump Gulch. Development on Sheep Mountain won't close access, as it is in the middle of the trail system. They are not trying to restrict people's use of the BLM property; just asking people to go around the private property.

Mike Herps said that people are trying to say that Jackson Creek Road is private, but are they traveling through other's private property to get to their own. As for access, he doesn't own a 4-wheeler, but if he did, he doesn't want to have to drive all the way around to Lump Gulch when he lives a few hundred yards down the road. Mike disputed the amount of traffic that they claim is on the road. However, if there really is that much use of the road, it would meet the requirements for prescriptive use.

Ted Schuele stated that his family has used this road to access public property for 110 years. He has personally used the road since 1932. He has done research on the early use of the road and found that it has been in use for 139 years, since 1870. Shane asked Ted if he is so concerned with public access, why all three of his gates are locked. Ted stated that there is no road across his property.

Ted stated that regarding the agreement, it is hard to see where this is a settlement that has been negotiated. It goes much beyond the original complaint in the lawsuit. Almost every line is designed to cause a controversy or invite a lawsuit. He noted that one section says that you can build a house on your property, unless it would cause an increase in traffic. This essentially creates a conservation easement on all the private property served on the road without compensation, which constitutes the taking of private property. Ted said that the best way to judge these types of things is to look at who wins and who loses. One of the losers is Dr. Massouh, who has 17 parcels up there that could be sold without going through the subdivision process. He went on to name several people, including himself, that own property up there that would never have the possibility to be developed. Also, the people who live up there that would lose access. The winners in this case are 3 small lots, barely over an acre, and Lavignes.

Miles Partin stated that he has lived in the area 65 years. He noted that more and more areas are being closed off by FS, BLM, private concerns, all over the country. There is nothing wrong with someone buying a piece of property and building a home. More and more areas are being closed in the interest of a few private concerns. They are fighting to keep Montana open for use; yes, there needs to be restrictions, there needs to be policing. He is understanding of where the plaintiffs are coming from, but this closure doesn't make sense to him.

Mr. Harris stated that there have been a number of thoughtful comments regarding making a compromise. He does need for the record to state something however. He asked the Commissioners to remember back in June when the court required us to have a mediation session. Only one citizen that was invited to the session and that was Mr. Schuele. His client's frustration level is such that they felt the mediation session was very unproductive; it was political statements and posturing, and they need to keep this in mind when asking why no compromise.

Commissioner Weber stated that he would share the frustration. The Commission, as a whole, is frustrated with this issue. They have been dealing with this issue since he became a Commissioner. They have driven up the road, tried to figure out ways to resolve this, ways that the County could give, and presented compromises. One of the ways that they have chosen to compromise is that there is a logical argument that this road was petitioned for when the Little Buffalo Creek Road was petitioned for; that was actually the petition that opened this portion of the road. They chose as a Commission with their legal counsel not to pursue that; not to pursue the fact that it is a 60-foot right-of-way petitioned-for, granted by a Commission years and years ago. Part of the reason is where Mr. Schmaus' well and drainfield are located. If they pushed for a 60 foot right-of-way, how would that affect the residents. The Commission compromised by deciding that they weren't going to push that on them. At the same time, they have to balance the fact that at some time in history a Commission said that this is a county road. Whether it was prescriptive or not, this is a county road. Our 2002 resolution says that it is a county road; if it was prescriptively done the fact that the residents feel that they are being trespassed upon firms up that position. It actually says that if these people are using the road adversely to the landowners, it is prescriptive. We find ourselves in a pretty tight wedge between Montana law and positions that we have tried to take. They have tried to find something that we could put in policy to not have to go to court over roads; very frustrating to us and to our attorneys. The chance for the Commission to be sued over road issues is overwhelmingly large. He has spent hours upon hours studying case law and tried to find ways through this and don't know where there is a way through this. It almost has to go to court to be settled. If the Commission agreed to this, they would be sued the next day. It is frustrating, they are sorry that it is frustrating, but it is a litigious issue. He is a proponent of personal property rights and also a proponent of public access. He thinks that most Montanans are that way, but when it impacts us personally, it pushes and pulls in ways that we don't want it to.

Commissioner Kirsch stated that it looks like this is going to have to be settled in court. He doesn't feel that there is any way that they, as Commissioners, can resolve this.

Commissioner Kirsch moved to let the settlement proposal go to Judge Tucker for decision. Commissioner Lythgoe stated that the motion dies for lack of a second.

Commissioner Lythgoe stated that the only thing that he will say is that he doesn't know if there are any conversations that they could have before this goes to court or to keep it from going to court, but when he read the settlement agreement it seemed pretty one-sided to him. He couldn't second the motion because he doesn't want to give Judge Tucker the impression that this settlement agreement is something that the Commission supports, because it is way, way one-sided.

There was no motion as it relates to this particular issue, and it will not be forwarded to the court.

Commissioner Lythgoe read into the record the names of those that submitted comments to the Commission as follows:

Tommy McCullough	J. Andrew & Donna O'Neill
Marty Zaluski	Doug Ungerman
David Koch	Dan & Jackie Johnson
Mike Young	Scott & Glenda Fabel
Mark Fleorchinger	Les & Ann Bramblett
Jim Pollard	Henry Darrah
Patrick McEwen	Ken Robbins
David Koch	Dana Petersen
Tiffany Weston	Patricia Dugaard
Rick Anderson	Ron Stipcich
Don Gordon	John & Joni Johnson
Rick Anderson	Tom Stark
Jody Loomis	Kathleen Partin
Miles Partin	Mike & Julie Herbst
Mike Reed	Terry Wollin
Mark Trudeau	Bob Mullenix
Bob & Diana Vanek	Paul & Bobbi Foran
Ken Foran	Dean Allport
Gary Palm	George Sonnenberg
Shawn Lar	Russ & Sherry Bell
Mike & Kathy Muis	David Peck
Rick Shelbourn	Darrel Stordahl
Tim Warren	Mary Ball
Greg Robbins	J.D. Sauter
Marc & Tammy Bridges	

OPPORTUNITY FOR PUBLIC COMMENT

Marty Zaluski stated that he has a request regarding the hours of operation at the dump in Montana City. He is requesting that the county landfill be opened earlier or later. Because of the current hours, the transfer site is essentially closed to him during the week. He feels lucky that he is able to use it on the weekends.

Commissioner Weber moved to adjourn Commissioner Lythgoe seconded. The motion carried.

MEETING ADJOURNED

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

TOMAS E. LYTHGOE, CHAIR

KEN WEBER, COMMISSIONER

DAVE KIRSCH, COMMISSIONER